

COASTAL STATES ENERGY CO.

IBLA 88-209

Decided August 15, 1989

Appeal from a decision of the Moab District Office, Bureau of Land Management, requiring payment of advance royalties in lieu of continued operation under coal lease U-47080.

Affirmed in part, set aside and remanded in part.

1. Coal Leases and Permits: Royalties -- Mineral Leasing Act: Royalties

Sec. 6 of the Federal Coal Leasing Amendments Act of 1976, 30 U.S.C. § 207(b) (1982), requires continued operation of a lease that has achieved diligent development. However, the requirement may be suspended upon application and payment of advance royalties. The failure to make advance royalty payments in lieu of continued operation subjects the lease to cancellation.

2. Coal Leases and Permits: Generally -- Mineral Leasing Act: Generally -- Regulations: Force and Effect as Law -- Regulations: Validity

The Board of Land Appeals has no authority to declare invalid duly promulgated regulations of this Department. Such regulations have the force and effect of law and are binding on the Department.

3. Coal Leases and Permits: Generally -- Mineral Leasing Act: Generally

If the record contains conflicting BLM calculations of recoverable coal reserves existing on the lease at the time the lease became subject to the due diligence requirement, and BLM has failed to explain its decision to use an earlier, higher estimate of recoverable reserves rather than a subsequent, lower estimate for calculating the production rate necessary to satisfy the continued operation requirement, BLM's calculations will be set aside, and the case will be remanded for further consideration of the recoverable coal reserves estimate.

APPEARANCES: Brian E. McGee, Esq., Denver, Colorado, for appellant; David K. Grayson, Office of the Regional Solicitor, Salt Lake City, Utah, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Coastal States Energy Company (Coastal States) has appealed from a decision of the District Manager, Moab (Utah) District Office, Bureau of Land Management (BLM), dated September 16, 1987, finding Coastal States to be in noncompliance with the terms and conditions of coal lease U-47080, and requiring payment of advance royalties in lieu of continued operation on the lease for the period July 1, 1986, through June 30, 1987.

Coal lease U-47080 was issued with an effective date of October 1, 1981, pursuant to and subject to the terms and provisions of the Mineral Leasing Act of 1920 (MLA), as amended, 30 U.S.C. §§ 201-209 (1982). Production from the lease commenced in March 1982, and by the end of June 1982, 189,262 tons of coal had been produced. As a result, the diligent development requirement mandated by section 7 of the MLA, 30 U.S.C. § 207 (1982), and 43 CFR 3480.0-5(a)(12), had been met, and a continued operation year (COY) of July 1 through June 30 had been established pursuant to 43 CFR 3480.0-5(a)(9). BLM records indicate the following production from the lease: 1/

Continued Operation Year	Production, tons raw coal
1 - July 1982 through June 1983	302,603
2 - July 1983 through June 1984	200,483
3 - July 1984 through June 1985	191,942
4 - July 1985 through June 1986	94,473
5 - July 1986 through June 1987	0

In its September 16, 1987, decision notifying Coastal States that it was in noncompliance with the terms and conditions of lease U-47080, BLM stated:

Section 7 of the Mineral Leasing Act of 1920 subjects all Federal coal leases to diligent development and continued operation requirements pursuant to the regulations in 43 CFR 3483. Federal coal lease U-47080 was issued October 1, 1981 and became subject to diligence on that date. [2/]

1/ These production figures, which differ somewhat from the production amounts proffered by both Coastal States and BLM in their appeal submissions, are derived from information contained in the production report summaries found in the record.

2/ The diligent development period commences on the effective date of a Federal coal lease issued after Aug. 4, 1976. See 43 CFR 3480.0-5(a)(13)(i)(A).

The Bureau of Land Management has determined the lease contained 15,100,000 [tons] of recoverable coal on the date it became subject to diligence, so the initial commercial quantities requirement was 151,000 tons (1% of the total recoverable reserves on the lease). This tonnage must be produced each year or over a three year average to maintain continued operation beginning July 1, 1982.

According to our production records, lease U-47080 met the diligence requirement in the second quarter of 1982 and entered continued operation in the next royalty period, July 1, 1982. The continued operation year (COY) runs from July 1 through the following June. The lease produced commercial quantities of 151,000 tons of coal for the first 3 COYS, but had insufficient production during COY 4 (ending June 30, 1987) [3/] either for the year or on an average over three years. Therefore, advance royalty was due June 30, 1987 and the lease is in noncompliance with the terms and conditions of the lease.

BLM informed Coastal States that, pursuant to 43 CFR 3483.4(a), Coastal States had to apply to pay advance royalty in lieu of continued operation production within 30 days, or the lease would be subject to cancellation.

In its statement of reasons for appeal (SOR), Coastal States argues that the Secretary exceeded his statutory authority when promulgating the regulations defining diligent development and continued operation. It asserts that, although section 7 of the MLA, as amended by section 6 of the Federal Coal Leasing Amendments Act of 1976 (FCLAA), 30 U.S.C. § 207 (1982), does not specifically define diligent development or continued operation, it also does not provide express authority for the Secretary to promulgate regulations defining those terms. Coastal States further contends that the rulemaking record accompanying the promulgation of the continued operation regulations fails to elucidate any rational basis for those regulations. Finally, Coastal States asserts that the BLM's decision "(i) is unlawful, (ii) is factually incorrect, and/or (iii) is arbitrary, capricious and an abuse of discretion," because BLM incorrectly determined the amount of recoverable coal reserves the lease contained when it became subject to the diligence requirement (SOR at 11). Coastal States contends that the total recoverable reserves should be 13,425,000 tons (i.e., 979,000 tons produced and 12,446,000 recoverable tons remaining).

In its answer, BLM first counters that the regulatory definitions found in 43 CFR 3480.0-5(a) have been found by this Board to be within the intent of the MLA, and contends that these regulations have the force and effect of law and are binding on the Department. BLM admits that the decision on appeal contains two errors: first, the commercial quantities

3/ In its answer, BLM acknowledges that it erred in stating that the lease failed to maintain sufficient production in COY 4, and states that this failure occurred in COY 5. COY 5 ran from July 1, 1986, through June 30, 1987.

requirement should have been 150,261, not 151,000, tons of coal; and second, that the lessee failed to maintain the required production in COY 5, not COY 4. BLM explains that it accepted Coastal States' estimate that there were 14,656,000 tons of recoverable reserves as of January 1, 1983. This figure was used in the Resource Recovery and Protection Plan submitted by Coastal States in April 1983. BLM noted that, because the lease became subject to section 7 of the MLA on October 1, 1981, the 370,088 tons of coal production from the lease between October 1, 1981, and January 1, 1983, were added to the estimated reserves set out in the Resource Recovery and Protection Plan. Based on these figures, BLM determined the recoverable coal reserves subject to the lease when it became subject to the diligence requirement to be 15,026,088 tons, and the commercial quantities amount, which equals 1 percent of the recoverable reserves, to be 150,261 tons.

[1] Section 7 of the MLA, as amended by section 6 of FCLAA, 30 U.S.C. § 207(b) (1982), subjects each lease "to the conditions of diligent development and continued operation of the mine or mines, except where operations under the lease are interrupted by strikes, the elements, or casualties not attributable to the lessee," and provides that the Secretary may suspend the continued operation requirement upon the payment of advance royalties, if the Secretary determines that the suspension will serve the public interest.

Section 32 of the MLA, 30 U.S.C. § 189 (1982), authorizes the Secretary "to prescribe necessary and proper rules and regulations" and to take other actions he deems necessary to carry out the purposes of the Act. See Veola & Aaron Rasmussen, 109 IBLA 106 (1989).

Pursuant to the authority of these sections of the MLA, the Department adopted regulations defining diligent development, commercial quantities, and continued operation. 43 CFR 3480.0-5(a)(12) defines diligent development as "the production of recoverable coal reserves in commercial quantities prior to the end of the diligent development period." As defined by 43 CFR 3480.0-5(a)(6), commercial quantities is 1 percent of the recoverable coal reserves. In 43 CFR 3480.0-5(a)(8), the term continued operation is defined as

the production of not less than commercial quantities of recoverable coal reserves in each of the first 2 continued operation years following the achievement of diligent development and an average amount of not less than commercial quantities of recoverable coal reserves per continued operation year thereafter, computed on a 3-year basis consisting of the continued operation year in question and the 2 preceding continued operation years.

There is no question that Coastal States achieved diligent development by the end of the second quarter of 1982. Once it achieved diligent development Coastal States was obligated to maintain continued operation, unless this obligation was suspended under 43 CFR 3483.3. See 43 CFR 3483.1(a)(2). If Coastal States did not maintain continued operation, it became obligated to pay advance royalties in lieu of continued operation, or the lease is subject to cancellation. See 43 CFR 3483.2(c); 43 CFR 3483.4. See also Western Slope Carbon, Inc., 98 IBLA 198 (1987).

[2] Coastal States alleges that when promulgating the regulatory definitions of diligent development and continued operation now found at 43 CFR 3480.0-5(a), the Secretary exceeded the authority granted to the Department by section 6 of FCLAA, and further argues that the rulemaking record expresses no rational basis for those definitions. This Board has no authority to declare duly promulgated regulations of the Department invalid. Duly promulgated regulations have the force and effect of law and are binding on the Department. Veola & Aaron Rasmussen, supra; Western Slope Carbon, Inc., supra. See also GeoResources, Inc., 107 IBLA 311, 96 I.D. 77 (1989).

In any event, we have previously addressed an allegation that the regulations establishing 1 percent of recoverable coal reserves as the measure of commercial quantities are contrary to the intent of the MLA and found them to be valid. Western Slope Carbon, Inc., supra. Similarly, the continued operation regulations clearly are well within the authority granted to the Secretary by sections 7 and 30 of the MLA, 30 U.S.C. §§ 207 and 187 (1982), discussed above. In addition, the rulemaking provisions of the Administrative Procedure Act (APA), 5 U.S.C. § 553(c) (1982), require only a "concise general statement" of the basis and purpose of a rule. The Department's explanation for the adoption of the challenged rules complies with the APA's requirements. See 47 FR 33157 (July 30, 1982). See also 40 FR 60070, 60071 (Dec. 31, 1975), and 41 FR 21779, 21780 (May 28, 1976) (discussing the basis and purpose of the predecessors to the current regulations). Therefore, we affirm BLM's decision to the extent that it found these regulations applicable to Coastal States' lease U-47080. ^{4/}

[3] The remaining issue focuses on the estimate of the recoverable coal reserves existing on the lease on the date it became subject to the diligent development requirement, *i.e.*, October 1, 1981. In its answer, BLM explained that it calculated the recoverable reserves as 15,026,088 tons of coal by adding the actual production from the lease between October 1, 1981, and January 1, 1983, to Coastal States' own estimate of the recoverable reserves as of January 1, 1983. Coastal States contends that the actual recoverable reserves are only 13,425,000 tons of coal. The resolution of this final question centers on the accuracy of Coastal revised estimate and on whether BLM was or should have been aware of that estimate.

Coastal States has submitted its various estimates of the amount of recoverable reserves as attachments to its SOR. These reserve calculations have been periodically revised by its personnel as a result of information gained during mining operations since January 1983. Coastal States' latest

^{4/} We note that section 1 of lease U-47080 expressly provides that the lease is subject to all regulations of the Secretary now in force or hereafter in force, "and all of such regulations are made a part hereof." Section 3 of the lease acknowledges that the lessee is required to diligently develop the lease and maintain continued operation of the lease, and states that "[t]he terms diligent development and continued operation are defined in the applicable regulations in Titles 10, 30 and 43 of the Code of Federal Regulations."

revised estimate is 13,425,000 tons. However, all of the documents Coastal States cites in support of its estimate are intra-company memoranda. There is no indication that any of this information had been transmitted to BLM to enable BLM to confirm those figures and possibly revise its determination of the amount of recoverable reserves. Coastal States' failure to keep BLM informed of its current estimate of the remaining recoverable coal reserve precludes Coastal States from complaining about BLM's determination of the recoverable reserves based upon the best information then available to it.

Despite Coastal States' failure to inform BLM of its revised estimates, we are unable to uphold BLM's recoverable reserves determination. BLM based its recoverable coal reserves determination on Coastal States' January 1983 estimate. However, the record contains a letter dated November 8, 1985 (well after BLM received Coastal States' January 1983 calculations), from BLM to Coastal States in which BLM states that it determined that the lease contained 12,605,557 tons of recoverable coal reserves when it became subject to diligence. The record also contains a January 7, 1987, letter in which BLM indicates that the recoverable reserves as of October 1, 1985, were 14,196,000 tons. ^{5/} BLM has offered no explanation as to why it ignored its subsequent and somewhat lower determinations and based its September 16, 1987, decision on Coastal States' earlier, higher estimate. Because the record contains conflicting BLM calculations of the initial amount of recoverable coal reserves contained in lease U-47080, we set aside BLM's September 16, 1987, determination of the recoverable coal reserves on October 1, 1981, and remand the case to BLM for further calculation of the amount of those reserves. On remand, BLM should seek input from Coastal States as to the appropriate amount of recoverable reserves.

To the extent not specifically addressed herein, Coastal States' arguments have been considered and rejected.

Accordingly, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed in part, and set aside and remanded in part.

R. W. Mullen
Administrative Judge

I concur:

Bruce R. Harris
Administrative Judge.

^{5/} In both of these letters, BLM requested current information which would support a change in the recoverable reserve determination.

